

REMARKS

As noted previously, the Applicant appreciates the Examiner's thorough examination of the subject application.

Claims 1-3 are pending in the subject application and were rejected in the final Office Action mailed 02 November 2009 on various statutory grounds, described in further detail below. Claim 1-is amended herein to clarify Applicant' claimed invention. No new matter has been added.

Applicant requests reconsideration and further examination of the subject application in light of the following remarks.

Specification

Paragraphs [0018]-[0023] are amended herein for grammatical clarity. No new matter has been added.

Claim Rejections – 35 U.S.C. § 102

Claims 1 and 2 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,219,021 to Fink ("Fink"). Applicant respectfully traverses the rejection and requests reconsideration for the following reasons.

A requirement for a rejection under 35 U.S.C. § 102(b) is that the cited reference must teach, inherently or expressly, each and every limitation as arranged in the claim(s) at issue. In this situation, Fink fails to teach all of the limitations as arranged in amended independent claim 1. The stopcock of amended claim 1 includes, *inter alia*, a primary arm and two secondary arms joined at a body "wherein each secondary arm has (i) a proximal segment adjacent to the body that is curved and flexible, and (ii) a distal segment, wherein the two distal segments can be configured essentially parallel to each other and the primary arm, wherein the two proximal segments can be oriented in a direction perpendicular to the principal arm."

In contrast, Fink teaches a color-coded stop-cock valve for use with intravenous (“IV”) sets, the valve including a valve body having at least two inlets and one outlet adapted to be connected to an IV system, a rotatable valve core formed with passages to interconnect with the inlet and outlet passages in the valve body upon rotation thereof and a valve handle connected to the core. The Fink handle and valve body are marked with distinct color indicia unique to each inlet and outlet so that the position of the valve and flow arrangement can be quickly discerned.

For the rejection, the Office Action (on page 3) states that Fink teaches (i) “each secondary arm has (i) a proximal section that is curved and flexible (col. 3, lines 44-50),” (ii) that “the primary and two secondary arms are each connected to a flexible length of tubing (inlet tube 34, inlet tube 38, and outlet tube 42, Fig. 1),” and (iii) “that the flexible length of tubing can therefore be bent in a way so that the inlet tube curve away from the body and then become aligned parallel to each other.”

In response, Applicant notes that the structures referred to by cited portions of Fink are actually IV tubing and NOT part of the Fink Stopcock. Fink makes this clear: “a flexible length of tubing 34 to a first container of liquid medication” [col. 3, lines 45-46], “a length of flexible tubing 38 to second container of medication” [col. 3, lines 48-49], and “a length flexible tubing to the patient by means of a hollow needle inserted into the patient’s vein and held in place by tape or other means.” [col. 3, lines 51-54]. Clearly, these structures are IV lines and not part of the Fink stopcock structure. Thus, Applicant respectfully submits that the rejection is based on an inaccurate and clearly erroneous characterization of Fink.

At the very least, Fink does not teach (or suggest) the above-noted configuration of the primary and secondary arms as recited in amended claim 1.

Because of the foregoing reasons, Fink forms an improper basis for a rejection of claims 1 and 2 under 35 U.S.C. § 102(b), and Applicant requests that the rejection be removed accordingly.

Claim Rejections – 35 U.S.C. § 103

Claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Fink, previously discussed, in view of U.S. Patent No. 7,033,339 to Lynn (“Lynn”). Applicant respectfully traverses the rejection and requests reconsideration for the following reasons. Lynn is directed to Luer access devices for the engagement of conventional Luer lock connectors and systems using penetration of a Luer tip of a Luer lock connector into a septum to achieve access for medical fluid transfer. See, e.g., Lynn, col. 1, lines 16-19. Lynn is not understood as curing the previously-noted deficiencies of Fink relative to amended claim 1. Thus, without acceding to the presence, sufficiency or propriety of the motivation adduced by the Examiner for the rejection, the combination of Fink and Lynn fails to teach or suggest all of the limitations of amended claim 3. Accordingly, Applicant respectfully requests that the rejection of claim 3 be withdrawn.

Conclusion

In view of the amendments and remarks submitted herein, Applicant respectfully submits that all of the pending claims in the subject application are in condition for allowance, and respectfully request a Notice of Allowance for the application. If a telephone conference will expedite prosecution of the application, the Examiner is invited to telephone the undersigned. Authorization is hereby given to charge our deposit account, No. 50-1133, for any fees required for the prosecution of the subject application.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

Date: 02 March 2010

/G. Matthew McCloskey/
G. Matthew McCloskey, Reg. No. 47,025
Attorney for Applicant
28 State Street
Boston, MA 02109-1775
Telephone: (617) 535-4082
Facsimile: (617) 535-3800